

EXHIBIT 1

5/22/2018 12:20 PM

Velva L. Price
District Clerk
Travis County
D-1-GN-18-002510
Ruben Tamez

CAUSE NO. D-1-GN-18-002510

NATIVE HOSTEL AUSTIN, LLC,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	126TH JUDICIAL DISTRICT
AMAZON CORPORATE, LLC; AMAZON	§	
FULFILLMENT SERVICES, INC.;	§	
AMAZON.COM SERVICES, INC.; and	§	
WELLS FARGO BANK, N.A.,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff NATIVE HOSTEL AUSTIN, LLC, files this Original Petition, and for cause of action pleads as follows:

I. DISCOVERY CONTROL PLAN

1. This case will be governed by Level 2 discovery pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff NATIVE HOSTEL AUSTIN, LLC, is a Texas limited liability company.

3. Defendant WELLS FARGO BANK, N.A., is a foreign financial institution and may be served with citation via its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218 USA.

4. Defendant AMAZON CORPORATE, LLC, is a Delaware limited liability company and may be served with citation via its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218 USA.

5. Defendant AMAZON FULFILLMENT SERVICES, INC. is a Delaware

corporation, and may be served with citation via its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218 USA.

6. Defendant AMAZON.COM¹ SERVICES, INC. is a Delaware corporation, and may be served with citation via its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218 USA.

III. JURISDICTION AND VENUE

7. The Court has jurisdiction over the parties and subject matter of this case. Venue is proper in Travis County, Texas, because a substantial part of the acts or omissions giving rise to the claim occurred in Travis County, Plaintiff's principal office is in Travis County, and/or under Section 15.0115. TEX. CIV. PRAC. & REM. CODE §§ 15.002, 15.0115.

IV. BACKGROUND

8. Native and Amazon Corporate, LLC, entered into a License Agreement in December 2017 (the "License Agreement") that provided Amazon with a license to enter and use the Native Hostel property in Austin, Texas, for one or more South by Southwest events. According to public filings in Delaware, Amazon Corporate, LLC, was merged with and into Amazon Fulfillment Services, Inc., effective January 1, 2018. According to public filings in Texas, Amazon Fulfillment Services, Inc. has amended its legal name to be Amazon.com Services, Inc., effective January 12, 2018. The Amazon defendants will be collectively referred to herein as "Amazon."

9. The License Agreement provided for a fee payable in four installments. The License Agreement also provided Amazon a right to cancel the License under certain conditions,

in which case any fee “that has been paid or was required hereunder to have been paid as of such cancellation to [Native] will be forfeited and/or paid to [Native].”

10. Amazon paid the second payment of \$132,500 via ACH transfer on December 18, 2017. The payment was transferred from Amazon’s account at Wells Fargo to Native’s account at PlainsCapital.

11. Amazon provided email notice of cancellation of the License Agreement on December 29, 2017.

12. Although the License Agreement provided that all payments made prior to cancellation would be retained by Native, Amazon requested that Native agree to return the second payment. Native did not consent to such return.

13. Amazon then collaborated with its bank, Wells Fargo, to effect the transmission of a fax to PlainsCapital stating:

To	PLAINSCAPITAL BANK	Fax	877-391-2794
From	Wells Fargo Bank, N.A.	Attn	ACH DEPARTMENT
Subject	Letter of Indemnity	Date	01/08/2018

We have been notified that the following ACH transaction was sent to you in error. Please consider this letter as your authorization to return the item(s) to us using the return code R06 (per ODFI).

14. According to the Operating Rules of NACHA – The Electronic Payments Association, return code “R06” signifies that “The ODFI [Wells Fargo] has requested that the RDFI [PlainsCapital] return an Erroneous Entry, or a credit Entry originated without the authorization of the Originator [Amazon].”

15. The NACHA rules further define an “Erroneous Entry” as an Entry (i.e., a transfer) that either (a) is a duplicate of an Entry previously initiated by the Originator or ODFI, (b) orders payment to or from a Receiver different than the Receiver intended to be credited or

debited by the Originator, or (c) orders payment in a dollar amount different than was intended by the Originator.

16. None of these criteria applies to the December 18 transfer, and thus Defendants' representation that NACHA return code R06 was applicable to the December 18 transfer was false.

**V.
BREACH OF CONTRACT—AMAZON**

17. Native and Amazon entered into a binding contract as described above. Amazon breached the contract as described above, including the provision that all payments made prior to cancelation would be retained by Native. Native seeks recovery of all damages caused by Amazon's breaches.

18. All conditions precedent have been performed or have occurred.

**VI.
FRAUD—AMAZON AND WELLS FARGO**

19. Defendants made material false representations as discussed above including without limitation that NACHA error code R06 was applicable to the December 18 transfer. Defendants knew the representations were false when made (or alternatively made the representations recklessly as positive assertions without knowledge establishing the truth of the representations), and Defendants made these false representations with the intent that Plaintiff and/or PlainsCapital rely on them.

20. PlainsCapital relied on these misrepresentations, including in authorizing the return transfer, and Plaintiff was thereby injured. Plaintiff seeks recovery of all damages caused thereby.

**VII.
ATTORNEYS' FEES**

21. Plaintiff requests an award of court costs and reasonable and necessary attorneys' fees under TEX. CIV. PRAC. & REM. CODE Chapter 38. Plaintiff, represented by counsel, made a presentment of claim and the amount owed has not been paid.

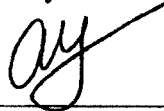
**VIII.
RULE 47 STATEMENT**

22. Plaintiff seeks monetary relief over \$100,000 but not more than \$200,000.

**IX.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that after a final trial on the merits the Court enter a judgment in favor of Plaintiff and against Defendants awarding Plaintiff all of its damages, attorneys' fees, costs of court, pre-judgment and post-judgment interest, and any such other and further relief to which it may be entitled in law or in equity.

Respectfully submitted,



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(512) 435-2360 – facsimile

ATTORNEYS FOR PLAINTIFF

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED NATIVE HOSTEL AUSTIN, LLC V. AMAZON CORPORATE, LLC, ET AL.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: <u>Andrew F. York</u> Email: <u>ayork@abaustin.com</u> Address: <u>100 Congress Ave., Suite 1300</u> Telephone: <u>512-435-2387</u> City/State/Zip: <u>Austin, TX 78701</u> Fax: <u>512-435-2360</u> Signature: <u>/s/ ayork</u> State Bar No: <u>24066318</u>		Names of parties in case: Plaintiff(s)/Petitioner(s): <u>Native Hostel Austin, LLC</u> Defendant(s)/Respondent(s): <u>Amazon Corporate, LLC</u> <u>Amazon Fulfillment Services, Inc.</u> <u>Amazon.com Services, Inc.</u> <u>Wells Fargo Bank, N.A.</u> <small>[Attach additional page as necessary to list all parties]</small>		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
<i>Civil</i>			<i>Family Law</i>		
Contract <i>Debt/Contract</i> <input type="checkbox"/> Consumer/DTPA <input checked="" type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <i>Foreclosure</i> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate & Mental Health <i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input checked="" type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do no select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input checked="" type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					